

XAVIER BECERRA  
 Attorney General of California  
 ANTHONY R. HAKL  
 Acting Supervising Deputy Attorney General  
 NOREEN P. SKELLY  
 Deputy Attorney General  
 State Bar No. 186135  
 EMMANUELLE S. SOICHET  
 Deputy Attorney General  
 State Bar No. 290754  
 1300 I Street, Suite 125  
 P.O. Box 944255  
 Sacramento, CA 94244-2550  
 Telephone: (916) 210-6057  
 Fax: (916) 324-8835  
 E-mail: Noreen.Skelly@doj.ca.gov  
*Attorneys for Defendants Edmund G. Brown Jr.,  
 Governor of California and Xavier Becerra,  
 California Attorney General*

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

**MICHAEL ZELNY, an individual,**

Plaintiff,

v.

**EDMUND G. BROWN, JR., an individual,  
 in his official capacity; XAVIER  
 BECERRA, an individual, in his official  
 capacity; CITY OF MENLO PARK, a  
 municipal corporation; and DAVE  
 BERTINI, in his official capacity,**

Defendants.

CV 17-7357 JS

**NOTICE OF MOTION AND MOTION  
 TO DISMISS FILED BY DEFENDANTS  
 EDMUND G. BROWN JR., GOVERNOR  
 OF CALIFORNIA AND XAVIER  
 BECERRA, CALIFORNIA ATTORNEY  
 GENERAL**

Date: April 12, 2018  
 Time: 1:30 p.m.  
 Dept: 3-17th Floor  
 Judge: The Hon. Richard G. Seeborg  
 Trial Date: TBD  
 Action Filed: December 28, 2017

**TO PLAINTIFF MICHAEL ZELNY AND ALL PARTIES OF RECORD:**

**PLEASE TAKE NOTICE** that on **April 12, 2018**, at 1:30 p.m. or as soon thereafter as  
 counsel may be heard in Courtroom 3 on the 17th floor of the above-entitled court, located at  
 450 Golden Gate Avenue, San Francisco, California, Defendants Edmund G. Brown Jr.,  
 Governor of California and Xavier Becerra, California Attorney General, will move pursuant to

1 Rule 12(b)(1) of the Federal Rules of Civil Procedure for an order dismissing this matter in its  
 2 entirety. Defendants Brown and Becerra move to dismiss the amended complaint on the grounds  
 3 that:

4 Pursuant to Federal Rule of Civil Procedure 12(b)(1), this Court lacks jurisdiction over the  
 5 subject matter because no case or controversy exists between Zeleny and Brown or Becerra.

6 Pursuant to Federal Rule of Civil Procedure 12(b)(1), this Court lacks jurisdiction over the  
 7 subject matter because Zeleny's claims are barred by Eleventh Amendment immunity, and Zeleny  
 8 fails to allege facts sufficient to bring his claims within the exception to such immunity under *Ex*  
 9 *parte Young*, 209 U.S. 123 (1908). Moreover, the Eleventh Amendment would also bar Zeleny's  
 10 claims if brought pursuant to the California Constitution.

11 This motion will be based on this notice of motion and motion, the memorandum of points  
 12 and authorities in support thereof, the pleadings, papers, and documents on file with the Court,  
 13 and the oral argument of counsel.

14 Dated: February 22, 2018

Respectfully submitted,

XAVIER BECERRA  
 Attorney General of California  
 ANTHONY R. HAKL  
 Acting Supervising Deputy Attorney General  
 EMMANUELLE S. SOICHET  
 Deputy Attorney General

19  
 20 /s/ Noreen P. Skelly  
 21 NOREEN P. SKELLY  
 22 Deputy Attorney General  
 23 *Attorneys for Defendants Edmund G. Brown*  
*Jr., Governor of California and Xavier*  
*Becerra, California Attorney General*

24 SA2018100198  
 25 12972088.docx  
 26  
 27  
 28

## CERTIFICATE OF SERVICE

Case Name: **Zeleny, Michael v. Edmund G.  
Brown, et al.** No. **CV 17-7357 JCS**

---

I hereby certify that on February 22, 2018, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**NOTICE OF MOTION AND MOTION TO DISMISS FILED BY DEFENDANTS  
EDMUND G. BROWN JR., GOVERNOR OF CALIFORNIA AND XAVIER BECERRA,  
CALIFORNIA ATTORNEY GENERAL**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 22, 2018, at Sacramento, California.

---

Eileen A. Ennis

Declarant

---

*s/ Eileen A. Ennis*

Signature

SA2018100198  
12972124.docx